No. 81-2356

Office - Supreme Court, U.S.
FILED
JUL 29 1982
ALEXANDER L. STEVAS,
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

IN RE:

ARTHUR H. GRANT,

Attorney-Petitioner.

On Petition For Writ Of Certiorari To
The Supreme Court Of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

MARY M. CONRAD
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In The

Supreme Court of the United States

October Term, 1981

IN RE:

ARTHUR H. GRANT,

Attorney-Petitioner.

On Petition For Writ Of Certiorari To The Supreme Court Of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

CONSTITUTIONAL PROVISION AND RULES INVOLVED

United States Constitution,
Amendment VI ..... see Appendix D

Illinois Code of Professional Responsibility,
D.R. 9-102 ..... see Appendix C

Rules of the Attorney Registration and Disciplinary Commission,
Rules 5.1, 5.3, 7.1, 8.1, 8.2 ..... see Appendix B

Rules of the Supreme Court of Illinois,
Rule 771 ..... see Appendix A

STATEMENT OF THE CASE

On February 19, 1982 the Supreme Court of Illinois issued an opinion suspending Petitioner from the practice of law for two years for his repeated acts of commingling and conversion of clients' funds. *In re Grant*, 89 Ill.2d 247, 433 N.E.2d 259 (1982). The decision resulted from cases no. 78-CH-34 and 80-CH-17 which had been consolidated before the Review Board of the Attorney Registration and Disciplinary Commission.

On December 19, 1978 case no. 78-CH-34 was filed charging Petitioner with two counts of failure to promptly pay funds due clients and commingling and conversion of those funds. On July 3, 1979 the Administrator was granted leave to file an amendment to the complaint, adding a third, similar charge. On March 25, 1980 after a hearing, the Hearing Board found the misconduct alleged and recommended that the Supreme Court of Illinois impose censure.

On March 31, 1980 case no. 80-CH-17 was filed before the Hearing Board charging Petitioner with three additional acts of conversion. On April 7, 1980 Petitioner was served with the following items:

1. Complaint;
2. Request For Admission Of Facts And Genuineness Of Documents;
3. Order Designating Hearing Panel and setting the hearing for May 13, 1980;
4. Notice of Hearing; and

5. A booklet containing the Rules of the Supreme Court and Attorney Registration and Disciplinary Commission related to disciplinary proceedings. (A-7)

As Petitioner did not appear or file any responsive pleadings within twenty-one days as required by Commission Rule 5.1, on April 29, 1980 the Administrator filed a motion pursuant to Commission Rule 7.1(1) requesting that the allegations of the complaint be deemed admitted. (A-2; A-10) While Petitioner was duly served with this motion, he did not file any written response. (A-8; A-9) On May 5, 1980, pursuant to Supreme Court Rule 216, the facts and documents identified in the Administrator's Request For Admission were deemed admitted and genuine, respectively, by operation of law due to Petitioner's failure to file a timely response.

On May 13, 1980, the scheduled hearing date, Petitioner appeared and orally requested a continuance based on his desire to retain counsel whom he had first contacted four days before. As Petitioner had filed no written motion supported by affidavit as required by Commission Rule 8.2 and had shown no diligence in responding to these charges, the Hearing Board denied Petitioner's motion. The Hearing Panel granted the Administrator's motion that the allegations of the complaint be deemed admitted. Petitioner presented his defense and vigorously cross-examined rebuttal witnesses of the Administrator. (A-3; A-12)

On July 1, 1980 Petitioner was served with the report of the Hearing Panel which found the misconduct alleged and recommended a suspension of three years and until further order of the Court. While the notice indicated that Petitioner had until July 25, 1980 to file any exceptions, Petitioner did not do so. (A-17; A-18)

On July 23, 1980 Petitioner and his counsel were served with an order of the Review Board consolidating cases no. 78-CH-34 and 80-CH-17 and affording Petitioner to and including August 21, 1980 to file a motion for briefs or oral argument. Petitioner filed no exceptions. (A-19; A-20)

On October 31, 1980 the Review Board issued its report affirming the findings of misconduct of the Hearing Panel and recommending a suspension of three years and until further order of the Supreme Court. The Review Board found that the recommendation of censure for the misconduct found in case 78-CH-34 was insufficient. (A-21; A-22)

On November 24, 1980 Petitioner filed exceptions before the Court to the amount of the recommended discipline, not to any infirmity of the proceeding. Nor did Petitioner make any such argument or dispute the findings of misconduct in the brief, oral argument, or petition for rehearing presented to the Supreme Court of Illinois.

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari to the Supreme Court of Illinois should be denied for the following reasons:

First, Petitioner was not denied due process of law during the course of the disciplinary proceedings against him. Petitioner received notice of the charge and an opportunity to defend, in complete compliance with the due process requirements as mandated in *In re*

Ruffalo, 390 U.S. 544 (1968). The Hearing Board of the Attorney Registration and Disciplinary Commission ("Commission") acted within its authority pursuant to Commission Rule 8.2 when it denied Petitioner's request for a continuance due to his dilatory conduct and his failure to submit a written motion supported by affidavit.

Second, the Supreme Court of Illinois did not deprive Petitioner of due process when the Court imposed discipline on him. After a fair hearing in which the Court found that Petitioner had repeatedly converted and commingled clients' funds, the Court imposed discipline pursuant to Supreme Court Rule 771, which empowers the Court to discipline by censure, suspension or disbarment. The amount of discipline imposed is within the discretion of the Supreme Court of Illinois. Such flexibility is crucial to achieve the ultimate goals of the disciplinary system.

Third, it is well-established that the United States Supreme Court is vested with jurisdiction only where a federal question was raised and decided in the state court proceedings. *Tacon v. Arizona*, 410 U.S. 351 (1972). In the present case, the Supreme Court of Illinois neither considered nor decided any federal question. Petitioner failed to raise any constitutional claim before either the Review Board or the Illinois Court and, therefore, did not preserve any constitutional objection.

REASONS FOR DENYING THE WRIT

I.

PETITIONER WAS NOT DENIED DUE PROCESS OF LAW IN CONTRAVENTION OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION DURING THE COURSE OF HIS DISCIPLINARY PROCEEDINGS.

A. Petitioner Was Not Deprived Of Due Process By The Hearing Board's Denial Of A Continuance.

The ultimate responsibility for the discipline of attorneys licensed to practice law in Illinois rests with the Supreme Court of Illinois. *Goldfarb v. Virginia State Bar*, 421 U.S. 733 (1975); *In re Wyatt*, 53 Ill.2d 44, 289 N.E.2d 630 (1972). Consistent with the constitutional requirement that an attorney-respondent be given notice of charges and an opportunity to be heard, *In re Ruffalo*, 390 U.S. 540, 550-51 (1968), the Supreme Court of Illinois established the Attorney Registration and Disciplinary Commission to conduct disciplinary proceedings subject to action by the Supreme Court which has original jurisdiction.

Petitioner's argument that he was deprived of his constitutional right to due process by the denial of his motion for a continuance in case number 80 CH 17 is without merit. On April 7, 1980, following a probable cause type hearing before the Inquiry Board, Petitioner was personally served with a formal, detailed complaint which had been filed with the Hearing Board. Petitioner, who was familiar with disciplinary proceedings as he was the subject of case number 78 CH 34, since consolidated with 80 CH 17, was also served with a booklet containing the rules related to disciplinary proceedings. (A-7)

On April 29, 1980, after Petitioner failed to appear and answer or otherwise plead within twenty-one (21) days, as is required by Commission Rules 5.1 and 5.3, the Administrator filed and served Petitioner with a *Motion and Request* asking the Hearing Board to deem the allegations of the complaint admitted pursuant to Commission Rule 7.1. (A-8; A-9; A-10)

As of May 13, 1980, the scheduled hearing date, Petitioner had not appeared and filed any pleadings. On May 13, 1980, Petitioner appeared at the hearing and orally requested a continuance in order to secure counsel. Upon questioning by the panel, Petitioner admitted that he had taken no action to contact an attorney until four days earlier. Petitioner was forced to admit that his participation in other litigation was not so continuous or burdensome to justify his knowing, utter disregard for these proceedings. The Hearing Panel appropriately denied Petitioner's motion for a continuance, as Petitioner's conduct was dilatory and Petitioner had not complied with Commission Rule 8.2 which required that a motion for a continuance be in writing and supported by an affidavit. (A-3; A-12)

The denial of Petitioner's motion did not violate any of his constitutional rights. Petitioner had ample notice and an opportunity to be heard. After the Hearing Panel's ruling, Petitioner participated in the hearing, offering his own testimony and vigorously cross-examining adverse witnesses.

Notwithstanding the "quasi-criminal" characterization given disciplinary proceedings in *dictum* in *In re Ruffalo*, 390 U.S. at 551, such proceedings are not criminal, but *sui generis* determinations of the fitness of any attorney to continue to practice law. *In re Daley*, 549 F.2d 469, 474-76 (7th Cir. 1977). Therefore, Peti-

tioner had no right to counsel guaranteed by the Sixth Amendment of the United States Constitution which is applicable only to criminal prosecutions. (A-4) While Petitioner waived his opportunity to be represented by counsel by his own dilatory actions, Petitioner suffered no prejudice. Petitioner's argument that the disparity in discipline recommended by the Hearing Panels in cases number 78 CH 34 and 80 CH 17 was speculative and contradicted by the record, as the Review Board noted Petitioner's undisputed intentional acts of conversion as the basis for its increased recommendation.

Petitioner has never filed an exception to the finding of misconduct in case number 80 CH 17 as his conversion was established by documents of undeniable authenticity. Petitioner's position before the Supreme Court of Illinois related only to the amount of discipline to be imposed, a decision which the Court ultimately reserves to itself. *In re Hopper*, 85 Ill.2d 318, 423 N.E.2d 900, 902 (1981). Petitioner's failure to offer any character evidence in case number 80 CH 17, the result of his own dilatory conduct, resulted in no prejudice to him as Petitioner convinced the Supreme Court of Illinois to consider character evidence offered in consolidated case number 78 CH 34.

B. The Supreme Court Of Illinois' Flexibility In Imposing Sanctions On Disciplined Attorneys Does Not Constitute Inadequate Notice In Violation Of Procedural Due Process Requirements.

The Supreme Court of Illinois has inherent power to discipline attorneys. *Goldfarb v. Virginia State Bar*, 421 U.S. 733, and considers supervision of the attorney disciplinary system as one of its most crucial functions. *In re Neff*, 83 Ill.2d 20, 413 N.E.2d 1282, 1284-85 (1980). In selecting the amount of discipline to be imposed, the

Court has attempted to balance the need for consistency with a consideration of the unique facts of each case. *In re Saladino*, 71 Ill.2d 263, 375 N.E.2d 102 (1978).

Flexibility in imposing sanctions is neither arbitrary nor unconstitutional, but necessary to achieve the goal of safeguarding the public, maintaining the integrity of the profession and protecting the administration of justice. *Middlesex County Ethics Committee, etc. v. Garden State Bar Association, et al.*, 50 U.S.L.W. 4712, 4714-15 (June 21, 1982). To achieve that result, the disciplinary system must be neither rigid nor mechanistic but flexible enough to allow for the uniqueness of each case. *In re Leonard*, 64 Ill.2d 398, 356 N.E.2d 62, 66 (1976). The Court must evaluate each situation independently because the circumstances of each case vary substantially and "sanctions which are appropriate in one situation may be inappropriate in another even though the underlying offense is similar or even the same." *In re O'Hallaren*, 64 Ill.2d 426, 356 N.E.2d 520, 523 (1976). Oftentimes, the Court's consideration of the totality of the particular circumstances actually benefits the attorney, such as the Petitioner.

Petitioner's argument that he was denied procedural due process because of the Court's lack of uniformity in imposing sanctions is without merit. In *In re Ruffalo*, 390 U.S. 544, this Court stated that an attorney is entitled to procedural due process to the extent that he receive notice of the charge and an opportunity to be heard. *Id.* at 550. Petitioner has admitted that the procedures of the Illinois disciplinary system are in full compliance with the *Ruffalo* mandate (*Petition* at 45-46). The Court has never construed procedural due process in disciplinary proceedings to mean that sanctions must be uniform.

Regardless of the amount of discipline imposed, an attorney should know that certain conduct, specifically conversion and commingling of funds, is condemned and warrants discipline. As Justice White stated in his concurring opinion in *In re Ruffalo*, 390 U.S. 544:

> "Even when a disbarment standard is as unspecific as the one before us, members of a bar can be assumed to know that certain kinds of conduct, generally condemned by reasonable men, will be grounds for disbarment. This class of conduct . . . also includes conduct which all responsible attorneys would recognize as improper for a member of the profession." *Id.* at 555.

For Petitioner to argue that had he known that he could be suspended for his conduct instead of merely censured he would not have commingled and converted clients' funds is ludicrous. It is well-established that conversion and commingling of funds by an attorney are serious offenses which, absent mitigation, warrant disbarment. *In re Smith*, 63 Ill.2d 250, 347 N.E.2d 133 (1976). See, also, *In re Borchardt*, 357 Ill. 458, 192 N.E. 383 (1934); *People ex rel. Chicago Bar Ass'n v. Story*, 265 Ill. 207, 106 N.E. 797 (1914). In 1970, the Illinois State Bar Association adopted the Illinois Code of Professional Responsibility which made clear the attorney's responsibilities in handling clients' funds and property. D.R. 9-102. Although at the time the Code was not binding on the court, the Supreme Court of Illinois ruled that "such canons of ethics have been found to 'constitute a safe guide for professional conduct and an attorney may be disciplined for not observing them.'" *In re Taylor*, 66 Ill. 2d 567, 363 N.E.2d 845, 847 (1977). D.R. 9-102 specifically sets forth the proper conduct to follow in handling clients' funds.

Petitioner's argument that he was deprived procedural due process based on inadequate notice of the wrong-

doing of his actions is unfounded. Certainly, procedural due process does not require more than fair notice of the acts with which attorney-respondent is charged, which Petitioner has admitted receiving. Supreme Court Rule 771 provided Petitioner sufficient notice that the court had the power to impose discipline ranging from censure to disbarment. That Petitioner did not know exactly what form his discipline would take is not a basis to challenge the validity of the Supreme Court of Illinois' finding that Petitioner committed the misconduct alleged.

II.

PETITIONER WAIVED ANY OBJECTION TO THE PROCEEDINGS BEFORE THE HEARING BOARD BY FAILING TO PRESERVE ANY SUCH OBJECTION BEFORE THE REVIEW BOARD AND THE SUPREME COURT OF ILLINOIS.

Petitioner failed to properly preserve his objection to the Hearing Board proceeding by failing to raise any such objection before the Review Board and the Supreme Court of Illinois. Petitioner did not file any exceptions to the Hearing Board report before the Review Board. Petitioner's exceptions before the Supreme Court of Illinois addressed the amount of the recommended discipline, not any alleged constitutional infirmity of the Hearing Board proceedings. Petitioner made no such constitutional argument in his brief or oral argument to the Supreme Court of Illinois or his petition for rehearing.

As Petitioner failed to preserve or argue this objection, the Supreme Court of Illinois did not consider any due process question. Therefore, there is no federal constitutional question for review by this Court. *Cardinale v.*

Louisiana, 394 U.S. 437 (1969); *Tacon v. Arizona*, 410 U.S. 351 (1972).

Petitioner's reliance on *Konigsberg v. State Bar of California*, 353 U.S. 252 (1956) is misplaced. The Court granted review based on its finding that Konigsberg had repeatedly objected to questioning on First and Fourteenth Amendment grounds throughout the hearings before the state bar examiners and that Petitioner had properly and adequately alleged denial of due process and equal protection in his petition for review to the California Supreme Court. *Id.* at 255, 258.

CONCLUSION

For the reasons set out above, respondents respectfully submit that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

MARY M. CONRAD
203 North Wabash Avenue
Suite 1900
Chicago, Illinois 60601
Telephone: (312) 346-0690
Attorney for Respondent

July 28, 1982

LISA MASUCCI, a Senior Law Student at DePaul University College of Law, and SANDRA ROSE, a Junior Law Student at Boston University School of Law, assisted in the preparation of this brief.

APPENDIX A

Rules of the Supreme Court of Illinois, Rule 771

Rule 771—Types of Discipline. Conduct of attorneys which violates the Code of Professional Responsibility contained in article VIII of these rules or which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute shall be grounds for discipline by the court. Discipline of attorneys may be:

(a) disbarment;
(b) disbarment on consent;
(c) suspension for a specified period and until further order of court;
(d) suspension for a specified period of time;
(e) suspension until further order of the court; or
(f) censure.

Adopted May 26, 1978, effective July 1, 1978; amended June 3, 1980, effective July 1, 1980.

APPENDIX B

Rules of the Attorney Registration and Disciplinary Commission, Rules 5.1, 5.3, 7.1, 8.1 and 8.2

Article V.

Answer & Further Pleadings: Procedure

Rule 5.1—Return Date. The respondent shall answer or otherwise plead to the complaint within 21 days after personal service of the complaint and notice of hearing, or within 28 days after the date of mailing when service is by mail.

Rule 5.3—Answer to be Specific. The answer shall specifically admit or deny each allegation of the complaint. Every allegation not explicitly denied is deemed admitted unless the answer states the reason the respondent is unable to make a specific denial.

Article VII.

Failure To Answer

Rule 7.1—Failure to Answer. If the respondent fails to answer or otherwise plead to the complaint as required by Rules 5.1 and 5.3 above, the proof required shall be as follows:

(1) in the event a respondent who has been personally served fails to answer, the allegations of the complaint shall be deemed admitted but the Hearing Panel in its discretion may require proof of any or all of such allegations;

(2) in the event the service of the complaint and notice of hearing on the respondent has not been personal, the allegations of the complaint shall not be deemed admitted, the Hearing Panel shall proceed with the hearing and proof of such allegations.

Article VIII.

Time Of The Hearing

Rule 8.1—Hearing Within Ninety Days after Filing of Complaint. Except in extraordinary circumstances, the hearing on the complaint shall commence before the Hearing Panel no later than 90 days after service of the complaint upon the respondent.

Rule 8.2—Continuances. No hearing shall be continued except upon written motion supported by affidavit. No hearing shall be continued more than once at the request of the respondent or his lawyer or at the request of the Administrator, except under extraordinary circumstances. Engagement of counsel shall not be deemed an extraordinary circumstance.

APPENDIX C

Illinois Code Of Professional Responsibility, D.R. 9-102

Rule 9—102. Preserving Identity of Funds and Property of a Client

(a) Other than advances for costs and expenses, all funds of clients paid to a lawyer or law firm, including funds belonging in part to a client and in part presently or potentially to the lawyer or law firm, shall be deposited in one or more separate identifiable trust bank accounts maintained in the State in which the law office is situated.

(b) The portion of funds deposited in accounts described in Rule 9—102(a) belonging to the lawyer or law firm may be withdrawn when due, after reasonable notice to the client of an intention to withdraw, unless

the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) A lawyer shall

(1) promptly notify a client of the receipt of his funds, securities, or other properties;

(2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them; and

(4) promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

Adopted June 3, 1980, effective July 1, 1980.

APPENDIX D

United States Constitution

Amendment VI.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

APPENDIX E

[Filed March 31, 1980]

BEFORE THE HEARING BOARD
OF THE ILLINOIS ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION

In the Matter of:	
ARTHUR H. GRANT	Administrator's No. 80-CH-17
Attorney-Respondent.	

ORDER

Pursuant to Rule 753(c) of the Supreme Court of Illinois and Rule 4.3 of the Attorney Registration and Disciplinary Commission, the above-captioned matter is assigned to Panel 1 of the Hearing Board. The members of the Panel are:

John S. Pennell, Chairman
William M. Dickson
Allen E. Kanter

Hearing will be held at 203 North Wabash Avenue, Suite 1900, Chicago, Illinois on May 13, 1980 at 10:00 A.M.

/s/ JOHN S. PENNELL
Chairman of the Hearing Board

DATED: March 31, 1980

APPENDIX F-1

[Filed March 31, 1980]

BEFORE THE HEARING BOARD
OF THE ILLINOIS ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION

In the Matter of:	
ARTHUR H. GRANT	Administrator's No. 80-CH-17
Attorney-Respondent.	

NOTICE OF HEARING

TO: Arthur H. Grant
30 W. Washington Street
Suite 1339
Chicago, Illinois 60602

You are hereby notified that a hearing will be held in the above-captioned matter on May 13, 1980 at 10:00 A.M., at 203 North Wabash Avenue, Suite 1900, Chicago, Illinois.

Copies of the complaint, the order scheduling the hearing, Illinois Supreme Court Rules 751-771 and the Rules of the Attorney Registration and Disciplinary Commission are attached.

/s/ JEROME LARKIN

Jerome Larkin
Counsel for Administrator
203 North Wabash Avenue
Suite 1900
Chicago, Illinois 60601
Telephone: (312) 346-0690

APPENDIX F-2

[Filed April 9, 1980]

BEFORE THE HEARING BOARD
OF THE ILLINOIS ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION

In the Matter of:	
ARTHUR H. GRANT	Administrator's No. 80-CH-17
Attorney-Respondent.	

PROOF OF SERVICE

I, Robert Andrzejewski, on oath state that I served a copy of Notice of Hearing, Order, Complaint, Notice of Filing, Request for Admission of Facts and Genuineness of Documents and a Copy of the Rules of the Supreme Court of Illinois and the Attorney Registration and Disciplinary Commission on Arthur Grant at 30 W. Washington, Suite 1339, Chicago, Illinois 60602 on April 7, 1980 at 1:10 P.M.

/s/ ROBERT ANDRZEJEWSKI

Signed and sworn to before me
this 8th day of April, 1980.

SARA L. NATHAN
Notary Public

APPENDIX G-1

[Filed April 29, 1980]

BEFORE THE HEARING BOARD
OF THE ILLINOIS ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION

In the Matter of:	
ARTHUR H. GRANT,	Administrator's No. 80-CH-17
Attorney-Respondent.	

NOTICE OF MOTION

TO: Arthur H. Grant
30 West Washington Street
Suite 1339
Chicago, Illinois 60602

PLEASE TAKE NOTICE that on April 29, 1980 I filed the original of the attached Motion by delivering the original and three copies to the Clerk of the Attorney Registration and Disciplinary Commission in Chicago.

/s/ JEROME LARKIN
Counsel

Jerome Larkin
Counsel for Administrator
203 North Wabash Avenue
Suite 1900
Chicago, Illinois 60601
Telephone: (312) 346-0690

PROOF OF SERVICE

I, Laura Cerkleski, on oath state that I served a copy of the Motion and Notice of Motion to Arthur H. Grant at the address shown above by regular mail, proper postage prepaid on April 29, 1980 at 4:30 p.m.

/s/ LAURA CERKLESKI

Signed and sworn to before me
this 29th day of April, 1980.

SARA L. NATHAN
Notary Public

APPENDIX G-2

[Filed April 29, 1980]

BEFORE THE HEARING BOARD
OF THE ILLINOIS ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION

In the Matter of:	
ARTHUR H. GRANT	Administrator's No. 80-CH-17
Attorney-Respondent.	

MOTION AND REQUEST

Carl H. Rolewick, Administrator of the Attorney Registration and Disciplinary Commission, by his attorney Jerome Larkin, moves that the allegations of the Complaint be deemed admitted and requests that he be instructed as to what further proof the Hearing Panel will require of the allegations in the Complaint. In support of this request, the Administrator states as follows:

1. Respondent was personally served with a copy of the Complaint, Notice of Hearing, Order Designating a Hearing Panel, as well as copies of the Rules of the Illinois Supreme Court and of the Attorney Registration and Disciplinary Commission on April 7, 1980. The affidavit of Robert Andrzejewski attesting to such service is filed of record.

2. Commission Rule 5.1 provides, in pertinent part:

> *Return Date.* The Respondent shall answer or otherwise plead to the complaint within 21 days after personal service of the complaint and notice of hearing.

3. Respondent has not answered nor has he otherwise pleaded.

4. Commission Rule 7.1 provides, in pertinent part:

> *Failure to answer.* If the Respondent fails to answer or otherwise plead to the complaint as required by Rules 5.1 and 5.3 above, the proof required shall be as follows:
>
> (1) in the event a respondent who has been personally served fails to answer, the allegations of the complaint shall be deemed admitted but the Hearing Panel in its discretion may require proof of any or all of such allegations.

WHEREFORE, the Administrator prays that the Panel deem the allegations to be admitted as required by Commission Rule 7.1 and further that the Panel instruct the Administrator as to what further proof, if any, the panel will require.

Respectfully submitted,

Carl H. Rolewick, Administrator
Attorney Disciplinary Commission

By: JEROME LARKIN
Counsel

Jerome Larkin
Counsel for Administrator
203 North Wabash Avenue
Suite 1900
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Telephone: (312) 346-0690

APPENDIX H

Portions of Hearing Board Transcript

[6] MR. PENNELL: Why did you not request an extension of time in which to answer? Mr. Grant, you have just ignored this Commission. You have ignored it totally. You didn't request an extension of time to file your answer. You didn't request a continuance until you get us all in here this morning. Why have you just ignored it?

MR. GRANT: Was very difficult. Like I said, I thought that I would be able to get in touch with Mr. Harte earlier, and asked him to represent me. I didn't want to take any action. Wasn't trying to ignore this Commission at all but I didn't want to take the wrong step or do the wrong thing by filing any papers on my own behalf which—

MR. PFAFF: Request for continuance?

MR. PENNELL: Not even a request for an extension [7] of time to answer?

MR. GRANT: Well, I made an oral request to—

MR. PENNELL: When?

MR. GRANT: Like I say, it was either Wednesday or Thursday when I talked with Mr. Larkin.

MR. PENNELL: That's a little late, Mr. Grant. You have 30 days or 21 days . . . 21 or 30?

MR. LARKIN: 21.

MR. PENNELL: You did nothing in that 21 days.

MR. GRANT: Well, I apologize but just say that I certainly didn't want to waste this Board's time, and I certainly have.

MR. PENNELL: All you have to do is file a written motion.

MR. GRANT: I certainly have no disrespect. It was not intended whatsoever. I hope it isn't taken in that vein.

MR. PENNELL: Mr. Larkin, have you anything to say?

MR. LARKIN: I have a brief response. Never have I indicated to Mr. Grant that I had any authority to grant a continuance of this hearing. I do not deny that I asked him if he intended to be present here. I asked him that question last week, either Wednesday or Thursday.

[8] I also again reiterated to him in a conversation last night that I had no authority to grant any continuance and if he wanted to address any motion to the Hearing Panel, that was the appropriate entity.

Again, the Administrator does not agree to this motion for continuance.

MR. PENNELL: You gentlemen excuse us, please?

MR. DICKSON: Before you go, Mr. Grant, what court is that suit filed in?

MR. GRANT: It was filed in Miscellaneous Remedies first before Judge Dunne, and change of venue was taken from there.

MR. DICKSON: Are you the only attorney appearing for the plaintiffs in that case?

MR. GRANT: Yes I am.

MR. DICKSON: You say you are in court virtually every day. You don't mean every day, do you?

MR. GRANT: No, I don't.

MR. DICKSON: Were you giving evidence every day?

MR. GRANT: We had hearings every time the City Council would meet or would anticipate they would continue it for a few days, maybe two or three days. There were motions which were filed continuously each time the matter came up.

[9] MR. DICKSON: Were you in court all day every day for five and six hours of hearing time?

MR. GRANT: No, I wasn't. No, I wasn't.

MR. PFAFF: Before you go, excuse me. Mr. Larkin, Mr. Grant made some reference to delivery of a transcript. What was that about?

MR. LARKIN: Pursuant to a subpoena, I took a sworn statement of Mr. Grant prior to the time when this complaint was authorized by the Inquiry Panel. The same date when I asked him if he intended to be present at the hearing, he made mention of the fact that he would

like a copy of the statement. I to the best of my recollection said I'd be happy to provide him with one and he should contact me. He mentioned the name of William Harte. And I heard nothing further as to the request for a copy of the transcipt.

MR. PFAFF: Thank you.

MR. PENNELL: Excuse us for a few minutes.

(Whereupon a recess was taken.)

MR. PENNELL: Mr. Grant, under the circumstances the Panel denies your motion for a continuance. Provided that Mr. Larkin establishes personal service on you of the complaint, we will deem the complaint admitted by reason of a failure to answer. And we will proceed from there.

[10] * * * * *

[11] MR. GRANT: Mr. Pennell, I don't know if it's possible to make a motion for a change of venue, but under the circumstances I do believe that this Panel is prejudiced against me because of what it's done already. It has denied me an attorney. I don't see how I can be fairly judged in this situation without being able to have an attorney.

I don't think any undue prejudice will be denied the Commiasion in this particular matter. The first time this matter is up. This is not the second time this matter is up. This is the first time.

I think that this action on the part of members of this Committee in denying me a continuance and denying me a right to have Mr. Harte here will deny me due process of law, will deny me a right to a fair hearing.

MR. PENNELL: Mr. Grant, there is no provision in the rules of the Commission for, as you put it, a change of venue. We come back to the fact that you have done nothing with respect to the complaint that was served upon you. Would you expect to go into a court of law having failed to answer a complaint—even answer the complaint—and obtain a continuance on the day of the hearing, having done nothing further?

MR. GRANT: I think in a court of law would be more [12] equitable in many instances, especially if the matter first arose. I don't think that under those circumstances . . . I'd say that most judges would grant a continuance in spite of that.

Now, here's a situation where proprietary rights of mine—that is the right to practice law—is being litigated without me having counsel, and this is the first time this matter is up. I think that it's a very harsh action to take under the circumstances.

MR. PENNELL: Mr. Grant, did you read the rules of the Commission that were served upon you at the time the complaint was served upon you?

MR. GRANT: I took a look at the rules.

MR. PENNELL: Did you read Article 8 that says that "Except in extraordinary circumstances the hearing on the complaint shall commence"—shall commence—"no later than 90 days after service of the complaint?" Did you read the rule that says, "No hearing shall be continued except upon written motion supported by affidavit?"

MR. GRANT: At this particular time, I am the affiant. I will state under oath that I hired Mr. Harte and I want Mr. Harte to be here prior to having this matter go forward.

MR. PENNELL: Did you read the rule that provides [13] "If the Respondent fails to answer or otherwise plead to the complaint as required by another rule 21 days after personal service, the proof shall be that the allegations of the complaint shall be deemed admitted?"

Mr. Grant, if you will excuse me, I don't believe you have paid any attention to this matter. I don't think you have read the rules of the Supreme Court with respect to it. I don't think you are aware of the rules of the Registration Commission.

I find nothing in what has happened to warrant an extension of time.

MR. GRANT: That's another reason I need an attorney I mean your assumption that I am not familiar with these rules and that I do not know, warrants me having

representation. But the other thing about it is that I think that just from what you can see, I don't understand how under the circumstances I can be judged fairly. You want me to proceed without an attorney. Here is something that is not going to unduly prejudice the Commission.

MR. PENNELL: We are not concerned with the Commission, Mr. Grant. We are concerned with the question of your fitness to continue to represent clients and whether they are being damaged by your continuing the practice of law.

APPENDIX I

[Filed July 1, 1980]

BEFORE THE REVIEW BOARD
OF THE ILLINOIS ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION

In the Matter of:

ARTHUR H. GRANT,

Attorney-Respondent.

No. 80-CH-17

NOTICE

TO:
1. Arthur H. Grant, Respondent
   30 W. Washington St. - #1339
   Chicago, Illinois 60602
2. William J. Harte, Counsel for Respondent
   111 W. Washington St. - #2025
   Chicago, Illinois 60602
3. Jerome Larkin, Counsel for Administrator
   203 N. Wabash Avenue - #1900
   Chicago, Illinois 60601
4. The Review Board

You are hereby notified that the Report of the Hearing Board in this matter, a copy of which is enclosed, has been filed and will be considered by the Review Board at its regular session in August, 1980.

Pursuant to the Rules of the Supreme Court and Commission, exceptions, if any, to the Report must be filed at Suite 1900, 203 North Wabash Avenue, Chicago, Illinois 60601, on or before July 25, 1980. A request for

leave to file a brief or for oral argument must be filed by the same date and at the same address.

Copies of the rules of the Supreme Court and Commission are enclosed.

/s/ SARA L. NATHAN
Clerk

PROOF OF SERVICE

I, Sara L. Nathan, on oath state that I served a copy of this Notice on the Respondent and Counsel for Respondent at the addresses shown above by mailing a copy to each of them by certified mail, return receipt requested, on July 1, 1980 at 5:00 P.M., with proper postage prepaid; at the same time copies were mailed to the Review Board by ordinary mail and delivered to Counsel for Administrator.

/s/ SARA L. NATHAN

Subscribed and sworn to before
me this 1st day of July, 1980.

_____
Notary Public

APPENDIX J

[Filed July 23, 1980]

BEFORE THE REVIEW BOARD
OF THE ILLINOIS ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION

In the Matter of:	)	
	)	No. 78-CH-34
ARTHUR H. GRANT,	)	80-CH-17
	)	
Attorney-Respondent.	)	Consolidated

ORDER

On the motion of the Review Board, Cases 78-CH-34 and 80-CH-17 concerning Respondent Arthur H. Grant are hereby consolidated. Any motion for either the Administrator or Respondent for briefs and or oral argument shall be filed on or before August 21, 1980.

ENTER: _____
Chairman, Review Board

DATED: July 23, 1980

PROOF OF SERVICE

I, Sara L. Nathan, on oath state that I served a copy of this Order on the Respondent and Counsel for Respondent at the addresses shown below by mailing a copy to each of them by regular mail, proper postage prepaid, on July 23, 1980 at 5:00 P.M.; at the same time copies were mailed to the Review Board and delivered to Counsel for the Administrator.

Arthur H. Grant,
Respondent
30 W. Washington Street
Suite 1339
Chicago, Illinois 60602

William J. Harte,
Counsel for Respondent
111 W. Washington Street
Suite 2025
Chicago, Illinois 60602

/s/ SARA L. NATHAN

Subscribed and sworn to before
me this 23rd day of July, 1980.

LAURA CERKLESKI
Notary Public

APPENDIX K

[Filed October 31, 1980]

BEFORE THE REVIEW BOARD
OF THE ILLINOIS ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION

In the Matter of:	)	
	)	Administrator's
ARTHUR H. GRANT,	)	Nos. 78-CH-34 & 80-CH-17
	)	
Attorney-Respondent.	)	Consolidated

PROOF OF SERVICE OF THE REPORT OF THE REVIEW BOARD

I, Laura Cerkleski, on oath state that I served a copy of the Report of the Review Board to the Supreme Court of Illinois on the Respondent and Counsel for Respondent at the addresses shown below by mailing a copy to each of them by certified mail, return receipt requested, on October 31, 1980 at 1:30 p.m., with proper postage prepaid; at the same time copies were mailed to the Hearing Panel by ordinary mail and delivered to Counsel for the Administrator.

Arthur H. Grant,
Respondent
30 W. Washington Street
Suite 1339
Chicago, Illinois 60602

William J. Harte,
Counsel for Respondent
111 W. Washington Street
Suite 2025
Chicago, Illinois 60602

HEARING PANELS

Bernard Kaufman
Two N. LaSalle Street
Suite 1808
Chicago, Illinois 60602

Roy I. Peregrin
305 Naperville Road
Wheaton, Illinois 60187

Lemuel L. Foster, Jr.
1525 E. 53rd Street
Room 607
Chicago, Illinois 60615

John S. Pennell
111 W. Monroe Street
Suite 1900
Chicago, Illinois 60603

Robert E. Pfaff
One IBM Plaza
44th Floor
Chicago, Illinois 60611

William M. Dickson
231 S. LaSalle Street
Suite 1955
Chicago, Illinois 60604

COUNSEL FOR THE ADMINISTRATOR

Mary M. Conrad, Senior Counsel
203 N. Wabash Avenue - Suite 1900
Chicago, Illinois 60601

/s/ LAURA CERKLESKI
Clerk, Attorney Disciplinary System

Subscribed and sworn to before
me this 31st day of October, 1980.

LAUREN A. KAISER
Notary Public